IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 625 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

I P PATEL

Versus

LAXMI KIRANA STORES

Appearance:

MR BJ TRIVEDI for MR KI SHAH for appellant

NOTICE SERVED for Respondent No. 1

MR KG PANDIT for Respondent No. 2

MR SK PATEL Ld. APP for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 01/09/2000

ORAL JUDGEMENT

The present acquittal appeal is directed against the impugned judgment and order dated 19.12.1987 rendered by the learned Judicial Magistrate First Class

(Municipal), Surat in PFA Case No. 15/1985, in which respondent - accused came to be charged for the offences punishable under sec. 7 and 16 of the Prevention of Food Adulteration Act (for short "the PFA Act") for selling turmeric powder which was found to be not conforming to the prescribed standard and containing more starch than prescribed.

The facts of the prosecution case, briefly stated, indicate that at around 9.30AM in the morning of 4.8.1984, the complainant (appellant herein) visited the shop of the accused (Accused no. 1). He called one witness and in his presence, accused no. 2 was interrogated. The complainant purchased 600 grams of chilly powder and 600 grams of turmeric powder for the purpose of analysis. He saw to the samples being made in three glass bottles in so far as turmeric powder was concerned after attending to the formalities of preparing the sample. He sent one to the Public Analyst and two to the Local Health Authority. Upon receipt of the report of the Public Analyst, he filed complaint before the learned Judicial Magistrate, First Class. Upon the trial of the case, the learned Magistrate found that the Public Analyst sent the report after great delay; that he did not set out the method of analysis; that he did not set out permissible proportion of food colour and starch; that the complainant did not follow the procedure as contemplated by sec. 11 of the PFA Act more particularly sec. 11(1)(b) thereof; that the complaint was filed at a belated stage; that the report of the public analyst was not received within the prescribed period of 40 days by the Local Health Authority as contemplated by Rule 7(3) of the Prevention of Food Adulteration Rules; that the complainant himself did not attend to the formalities as prescribed by the provisions of sec. 11(1)(b) of the Act; that even in the matter of taking, collecting and handling of the sample there is conflicting evidence of the complainant and his peon who have been examined before the learned Magistrate; and that the sanction accorded by the Local Health Authority has not been accorded after applying mind. The learned Magistrate, therefore, acquitted the accused no. 1,2 and 3 of the offences charged against them, whereas the trial of the accused no. 4,5 and 6 who were not available before the Ld. Magistrate was separated by directing issuance of warrant of arrest.

I have heard learned advocate appearing for the appellant, Mr SK Patel learned APP for the State of Gujarat and learned advocate for the accused (respondents herein). I have gone through the impugned judgment and

order of acquittal. The evidence adduced before the learned Magistrate has also been read before this Court. The observations of the learned Magistrate with regard to variance in the oral evidence of the respective witnesses with regard to taking, collecting and handling sample turmeric powder could be verified upon reading the evidence. The decision which has been relied upon by the learned Magistrate in the case of State of Maharashtra vs. Ranchhoddas Mooljibhai & Ors., reported in 1979 (II) Prevention of Food Adulteration Cases p. 348, rendered by the Bombay High court supports the conclusion reached to by the learned Magistrate in respect of compliance of sec. 11(1)(b) of the PFA Act. Hence, without entering into the proposition of law regarding whether provision of sec. 11(1)(b) of the PFA Act is mandatory or not, it has to be found that the learned Magistrate cannot be said to have erred in appreciating the evidence. Even if two views of reading of the evidence might be canvassed, the acquittal cannot be faulted. Besides, variation in the required standard of starch in the turmeric powder is not so excessive. Hence, bearing in mind the facts of the case, no indulgence is required to be shown in this appeal particularly when more than 12 years have passed since the date of the impugned order of acquittal.

In the result, this appeal is required to be dismissed. Order accordingly.

****

mandora/